

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	13-MJ-00635-1
	)	
	)	
vs.	)	
	)	
ADAM KOKESH,	)	Philadelphia, PA
	)	May 23, 2013
Defendant.	)	1:35 p.m.

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE THOMAS J. RUETER  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:	RICHARD W. GOLDBERG, ESQUIRE ASSISTANT UNITED STATES ATTORNEY UNITED STATES ATTORNEY'S OFFICE 615 Chestnut Street Suite 1250 Philadelphia, PA 19106-4476
For the Defendant:	JAMES J. McHUGH, JR., ESQUIRE DEFENDER ASSOCIATION OF PHILADELPHIA 601 WALNUT STREET SUITE 540 INDEPENDENCE SQUARE WEST PHILADELPHIA, PA 19106
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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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<u>FOR THE GOVERNMENT</u>				
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DONALD REED	3 (Nat)	5	36	
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<u>EXHIBITS</u>	<u>IDENT.</u>	<u>EVIDENCE</u>
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G-1 Affidavit		5
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<u>ARGUMENT</u>	<u>PAGE</u>
-----------------	-------------

By Mr. McHugh	37, 47
---------------	--------

By Ms. Natale	42
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Colloquy

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1 (The following was heard in open court at 1:40 p.m.)

2 THE COURT: Mr. McHugh.

3 MR. McHUGH: Good afternoon, Your Honor.

4 THE COURT: Okay, we're scheduled for a probable  
5 cause hearing and a detention hearing. Are you ready to  
6 proceed, Mr. McHugh?

7 MR. McHUGH: Yes, we are, Your Honor.

8 THE COURT: Okay, I'll hear from the Government.

9 MR. GOLDBERG: Thank you, Your Honor. If I may, I  
10 may defer to my colleague.

11 THE COURT: Okay, sure.

12 MR. GOLDBERG: Thank you, Your Honor.

13 MS. NATALE: Good afternoon, Your Honor. The  
14 Government calls Donald Reed.

15 THE COURT: Mr. Reed.

16 DONALD REED, GOVERNMENT'S WITNESS, SWORN

17 THE CLERK: Please state your name for the record.

18 THE WITNESS: Donald Reed.

19 THE CLERK: Please spell your last name.

20 THE WITNESS: R-E-E-D.

21 THE COURT: You may proceed.

22 DIRECT EXAMINATION

23 BY MS. NATALE:

24 Q Can you please state your name?

25 A Donald Reed.

1 Q By whom are you employed?

2 A National Park Service Independence National Historical  
3 Park.

4 Q How long have you been with the National Park Service?

5 A Approximately 24 years.

6 Q And what's your current title there?

7 A Current title is law enforcement specialist.

8 Q How long have you had that title?

9 A Right around eight years.

10 Q And you're assigned to Independence National Historical  
11 Park right across the street from the courthouse here?

12 A That is correct.

13 Q Okay. And as your duties as a law enforcement specialist  
14 with Independence National Historical Park, does that include  
15 investigating criminal violations in the park?

16 A Yes, it does.

17 Q Okay. Did you prepare an affidavit in support of the  
18 complaint and warrant, the arrest warrant of the defendant  
19 Adam Kokesh?

20 A Yes, I did.

21 Q And did you bring a copy of that with you here today?

22 A Yes, I did.

23 Q Okay. Is it true and correct?

24 A Yes, it is.

25 Q Do you adopt that as your testimony here today?

1 A Yes, I do.

2 MS. NATALE: Your Honor, I'd move for the admission  
3 of the affidavit for the purposes of the probable cause  
4 hearing, and the Government doesn't have any further questions  
5 at this time.

6 THE COURT: The affidavit and complaint is admitted.  
7 You may proceed, Mr. McHugh.

8 MR. McHUGH: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. McHUGH:

11 Q Mr. Reed, I'm going to go through this affidavit with  
12 you. I have some questions for you.

13 In paragraph 1, you indicated that you had worked  
14 for eight years in the position of law enforcement specialist,  
15 is that correct?

16 A Correct.

17 Q Prior to that what was your position with the United  
18 States National Park Service?

19 A A law enforcement park ranger.

20 Q Okay. And was that basically from eight years back to  
21 when you first started as a park ranger?

22 A No, I've actually been with the National Park Service for  
23 close to 25 years now.

24 Q Okay. So, after your position as park ranger, what were  
25 you before that?

1 A That was just it. It's just park ranger. There was  
2 nothing before that.

3 Q All right. So you were a park ranger up until eight  
4 years ago when you became a law enforcement specialist, is  
5 that fair to say?

6 A Yes.

7 Q Okay. Looking at paragraph 2 -- and you have a copy of  
8 the affidavit in front of you, is that correct?

9 A Yes, sir.

10 Q Okay. In paragraph 2, you indicate there that you  
11 received reports from -- "I know the following from reports  
12 from my own observations and those of other law enforcement  
13 officers," do you see that?

14 A Yes, sir.

15 Q Okay. The other law enforcement officers, do you recall  
16 who gave you reports concerning this incident?

17 A I believe so, yes.

18 Q And who would that be?

19 A Names, is that what you're looking for I guess?

20 Q Well, how else would I know -- I'm asking who are they.

21 A Okay. Let's see, there were approximately 30 to 35  
22 rangers, there were close to 50-some police officers that I  
23 would not -- I would not have that information.

24 Q Okay. So you can't name specifically who you got these  
25 reports from?

1 MS. NATALE: Your Honor, is he asking for a list of  
2 all 50 names or --

3 MR. McHUGH: Well, originally, but he indicated he  
4 can't give it.

5 MS. NATALE: Okay.

6 MR. McHUGH: Is that right --

7 THE COURT: Do you recall any of the names?

8 THE WITNESS: Some of these, yes, I do recall.

9 THE COURT: You want some of the names, Mr. McHugh?

10 MR. McHUGH: Yes.

11 A Okay. Keith Manchester, Eli Bowers, Michael, or Matthew  
12 Edgar.

13 Q And are these rangers?

14 A These are rangers here at Independence National  
15 Historical Park.

16 Q Okay, thank you.

17 A Continue?

18 Q Are there others you recall?

19 A Yes.

20 Q Yes, please.

21 A Okay. Our chief ranger Patrick Suddath, Alan Saperstein,  
22 Brian Pastowski (phonetic), Sinclair Reidberg (phonetic), Ryan  
23 McLeod.

24 MS. NATALE: Your Honor, this all will be provided  
25 in discovery. We'll provide a list of all the reports.

1 BY MR. McHUGH:

2 Q Of the people that you've named, are they all park  
3 rangers?

4 A Yes, sir.

5 Q Okay. The reports that you received, I count that you've  
6 identified eight individuals, is that right? Those reports,  
7 were they verbal or in writing?

8 A In writing.

9 Q Okay. So you received -- of the 50 -- or I'm sorry, I  
10 think you said approximately 80 people you talked to about  
11 this incident, is that about right?

12 A No, I didn't talk to all 80.

13 Q That's the number of people that were out there, is that  
14 right?

15 A That's correct.

16 Q Okay. Do you have an estimate of the number of people  
17 you talked to in order to make your affidavit? That's what I  
18 was getting at.

19 A An approximate number would be 25, I guess.

20 Q And were they all in the form of written reports?

21 A Yes.

22 Q Okay. Moving down into that paragraph it says, "I have  
23 not included all the information in my possession about the  
24 events described."

25 What other information do you have in your



1 possession that you did not include?

2 MS. NATALE: Objection, Your Honor. It's  
3 irrelevant.

4 THE COURT: Overruled. You may proceed. Do you  
5 want to repeat the question.

6 BY MR. McHUGH:

7 Q There's a reference about you have other information in  
8 your possession. Do you see that, sir?

9 A Yes.

10 Q Okay. What is it that you did not disclose?

11 What are you referring to there, sir, is my  
12 question?

13 A As far as -- the limited amount for probable cause  
14 determination.

15 Q Okay. So would it be fair to say you've included all of  
16 what you felt were the relevant facts in this affidavit of  
17 probable cause?

18 A A summary of.

19 Q A summary of all of the relevant facts, is that what  
20 you're saying?

21 A Yes.

22 Q Okay. Now moving to paragraph 3, you indicate there that  
23 the organizers of this event had obtained a permit from the  
24 park for the event, do you see that?

25 A Yes, sir.

1 Q Okay. Who were these organizers that you're referring to  
2 there?

3 A I don't have a copy of the permit with me.

4 Q Okay.

5 A The organizers of the event were Hip-Hop Philadelphia, I  
6 think. I don't have that in front of me, sir.

7 Q You're not -- you can't recall at this time. Is that  
8 fair to say?

9 A At this time, yes, thank you.

10 Q But you would agree with me that Mr. Kokesh, my client,  
11 was not an organizer of the event, is that fair to say?

12 MS. NATALE: Objection, Your Honor. He said he  
13 didn't have the paperwork in front of him.

14 THE COURT: Overrule the objection. You can answer  
15 if you know.

16 A I don't know.

17 Q You don't know if he was an organizer of the event?

18 A No, I don't.

19 Q Okay. Then do you know who -- the same question, if you  
20 don't know, just say you don't recall -- do you know who  
21 obtained the permit?

22 A No.

23 Q Okay. Paragraph 4, it says there that, "Because at past  
24 such events there had been claims that marijuana was  
25 possessed," do you see that, sir?

1 A Yes, sir.

2 Q What are you talking about there? Who made those claims?

3 A There were claims from visitors.

4 Q Are those written, are they written?

5 A What's that?

6 Q You received a written complaint or a claim?

7 A No, it would have been a verbal, verbal complaint.

8 Q But that was recorded by the park service?

9 A Excuse me?

10 Q Was that, the verbal complaint was recorded by the park  
11 service?

12 MS. NATALE: Objection, Your Honor. Whether or not  
13 it was recorded isn't really relevant to this probable cause  
14 hearing. Again, we'll provide all the reports in discovery.

15 THE COURT: I'll sustain the objection. You may  
16 proceed.

17 BY MR. McHUGH:

18 Q Can you identify anybody who made a claim that marijuana  
19 was possessed --

20 MS. NATALE: Objection, Your Honor.

21 Q -- by name, can you identify any of the names of the  
22 individuals?

23 THE COURT: Sustain the objection.

24 Q Were any of the individuals that made these claims law  
25 enforcement? If you recall.

1 A Yes.

2 Q Okay. Do you recall what part of law enforcement they  
3 were, what agency?

4 A They would be with the National Park Service.

5 Q Okay.

6 A At Independence.

7 Q Thank you, sir. Now, in paragraph 4 it indicates that,  
8 "Because of these claims, the area was posted by the park with  
9 signs." Do you see that?

10 A Yes, sir.

11 Q Okay. Who ordered the posting of the signs?

12 MS. NATALE: Objection. What relevance is that?

13 THE COURT: Overrule the objection. You may  
14 proceed.

15 THE WITNESS: Your question again, please?

16 BY MR. McHUGH:

17 Q You put in your affidavit in paragraph 4 that the area  
18 was posted by the park, do you see that?

19 A Yes, sir.

20 Q Okay. Who ordered that?

21 A That would be our superintendent of the park.

22 Q Name?

23 A Cynthia MacLeod.

24 Q Okay. And it indicates there that the "signs reminding  
25 the public that possession of marijuana in the park is

1 illegal," do you see that?

2 A Yes, sir.

3 Q Is that exactly what the signs said or are you  
4 paraphrasing there?

5 A Paraphrasing.

6 Q Okay. Do you recall exactly what the signs said?

7 A It gave reference to a 36 CFR charge for the possession  
8 of, the possession of drugs.

9 Q Right. Did it use the word controlled substance?

10 A I don't think it did.

11 Q Okay. It didn't use the word marijuana, did it?

12 A No, sir.

13 Q Okay. So the signs that were posted didn't mention  
14 anything about marijuana specifically, did they?

15 A No, sir.

16 Q That means they did not, is that right?

17 A They did not.

18 Q Okay. Now, I want you to go to paragraph 5. Do you see  
19 that, sir?

20 A Yes, sir.

21 Q Okay. Now earlier in paragraph 2, you indicated that  
22 this affidavit was based reports that you had received from  
23 law enforcement, is that right?

24 A Yes.

25 Q As well as your own observations, is that right?

1 A Yes.

2 Q Okay. So would it be fair to say you were out there on  
3 this day in question?

4 A Yes, I was.

5 Q Okay. Paragraph 5 obviously, is that a typo there as far  
6 as the name of my client?

7 A Yes.

8 Q Okay.

9 A Type error?

10 Q Well, his name is not Richard, is it?

11 A No.

12 Q Okay, so we can correct that.

13 A Not that I know, yes.

14 Q Okay. It indicates that Mr. Kokesh was addressing the  
15 group over the loudspeaker system, do you see that?

16 A Yes.

17 Q Okay. Did you hear him address the group?

18 A Yes, I did.

19 Q Okay. You didn't hear him make any type of threats, did  
20 you?

21 A No, sir.

22 Q Okay. And in fact, the person who did the countdown to  
23 smoke the marijuana was Mr. Tamaccio, is that right?

24 A From my understanding, yes.

25 Q Well, when you say your understanding, did you hear that?

1 A I would say that that is a yes.

2 Q Okay. Then it indicates in that same paragraph, "The  
3 crowd was also urged over the loudspeaker to form a tight  
4 circle." Do you see that?

5 A Yes, sir.

6 Q Do you know who did that, who said that?

7 A Who said that?

8 Q Yes.

9 A Tamaccio.

10 Q Okay. And by the way, did he use the term tight circle  
11 or are you paraphrasing?

12 A No, he used the term tight circle.

13 Q Okay. And then it said, "to hinder law enforcement."

14 A That's correct.

15 Q Did Tamaccio say form a tight circle to hinder law  
16 enforcement?

17 A It was along those lines of him saying that, to make it  
18 more difficult for the police.

19 Q Okay. Is that the best of your recollection, he said to  
20 make it more difficult for the police?

21 A Yes.

22 Q Okay. But again, that was Tamaccio who said that, is  
23 that right?

24 A Yes, sir.

25 Q Okay. Now moving to paragraph 6, it indicates there

1 that, "National Park Service rangers approached." Do you see  
2 that very beginning of the paragraph?

3 A Yes, sir.

4 Q Would that have been all 30 to 35 park rangers?

5 A No, it would not.

6 Q How many approached, if you recall?

7 A Approached members of the crowd who were seen in  
8 possession of what appeared to be -- this is referencing --  
9 approached members of the crowd who were seen in possession of  
10 what appeared to be marijuana cigarette.

11 Q Right. My question is the very beginning of that  
12 sentence says, "National Park Service rangers approached."

13 A Right.

14 Q How many approached?

15 A That would be --

16 MS. NATALE: Objection, Your Honor. Again, this  
17 will all be provided in discovery at a later date. I don't  
18 see how that's relevant to the probable cause hearing.

19 MR. McHUGH: Your Honor, these questions are  
20 specifically tailored to the exact language in the affidavit,  
21 knowing obviously the scope of these hearings, and that's what  
22 I intend --

23 THE COURT: I'll overrule the objection. Why don't  
24 you rephrase it again, repeat it, so the witness understands  
25 it.



1 BY MR. McHUGH:

2 Q Paragraph 6, beginning of the sentence, "National Park  
3 Service rangers approached." Do you have any idea -- you were  
4 out there -- how many of these rangers approached the crowd?

5 A Approximately 25.

6 Q Okay. Now I know you guys are able to do crowd  
7 estimates. Were you able to make a crowd estimate? You talk  
8 about the crowd. That day were you able to make a crowd  
9 estimate of the size of the crowd?

10 MS. NATALE: Objection, Your Honor. How is the size  
11 of the crowd relevant to whether or not this defendant is --  
12 we have probable cause of what this defendant did in violation  
13 of the stature.

14 THE COURT: Overruled. You may proceed.

15 BY MR. McHUGH:

16 Q You can answer it, sir.

17 A Okay, can you repeat it again, please? I'm sorry.

18 Q Yes. You make a reference there in your affidavit about  
19 members of the crowd. Do you see that?

20 A Yes.

21 Q Was there -- or can you tell us today what the estimate  
22 -- did you count the crowd specifically?

23 A No.

24 Q Okay. Are you able today to estimate?

25 A We have -- we don't do estimates on crowd sizes.

1 Q Can you estimate? You were out there, you have 23 years  
2 of law enforcement, can you estimate how many people were in  
3 this crowd you're referencing?

4 A No, sir.

5 Q You can't make any estimate whatsoever?

6 THE COURT: When you say the crowd, you mean those  
7 that appeared to have marijuana cigarettes, that's the crowd,  
8 or the crowd generally?

9 MR. McHUGH: Okay, well, I'm talking about the crowd  
10 generally. I'm sorry, Your Honor.

11 A There are people that were coming and going the whole  
12 entire time.

13 Q Okay.

14 A There would be no way I could make estimates on it.

15 Q Okay. There were fences that were erected for this  
16 event, is that right?

17 A Bicycle -- yes.

18 Q Those metal, where you could put a bike?

19 A Yes.

20 Q And they were placed around what I would call the speaker  
21 stage, is that right?

22 A They were further back.

23 MS. NATALE: Objection. That's beyond the scope of  
24 the affidavit. There's nothing about fences in the affidavit,  
25 Your Honor.

1 MR. McHUGH: Well, let me rephrase.

2 BY MR. McHUGH:

3 Q The signs that you talked about being posted, they were  
4 posted on these fences, is that right?

5 A Yes, sir.

6 Q Okay. So now that we know that the signs that are in the  
7 affidavit were on these fences, approximately how far were  
8 they from the speaker stage?

9 If you don't know, sir, you don't know.

10 A I don't know.

11 Q Okay. The crowd that you're referencing, and I'm talking  
12 about the entire crowd of civilians, were they within these  
13 fences? Is that the crowd you're talking about within this  
14 fenced off area?

15 A Yes.

16 Q Okay. Now, you indicate that "Kokesh was next to and had  
17 locked arms with a person who had a marijuana cigarette." Do  
18 you see that?

19 Same paragraph, paragraph 6. "Kokesh was next to  
20 and had locked arms with a person who had a marijuana  
21 cigarette." Do you see that?

22 A Okay, yes, sir.

23 Q Okay. Did you observe that personally?

24 A No, I did not.

25 Q Who told you that he did that?

1 A The ranger that was involved.

2 Q Who's that?

3 A That would be Keith Manchester.

4 Q And did Keith Manchester tell you that personally or with  
5 a written report, or both?

6 A It was with a written report.

7 Q Okay. So you didn't do a verbal interview, oral  
8 interview with Mr. Manchester, you just relied on his written  
9 report?

10 A Yes.

11 Q Okay. Did -- in the written report, did he identify who  
12 that person was that had the marijuana cigarette that Kokesh  
13 was allegedly locking arms with?

14 A I'm sorry, say that again?

15 Q Okay. Same sentence.

16 A Right.

17 Q Moving a couple words further, it says, "locked arms with  
18 a person who had a marijuana cigarette." Do you see that?

19 A Yes.

20 Q Okay. Did Manchester identify who that person was?

21 A Yes.

22 Q Okay. What was the name of that person, if you recall?

23 A Donald -- I'm not quite sure of the last name. First  
24 name was Donald, but I can't remember right now the last name.

25 Q Did he get arrested?

1 A No, he did not.

2 Q Cited in any way?

3 A He was issued a citation.

4 Q Okay. On the spot and allowed to leave?

5 A Yes, sir.

6 Q Okay. It says "as the ranger approached." Is that  
7 ranger Keith Manchester?

8 A Yes.

9 Q Okay. "Kokesh physically blocked." Do you see that?

10 A Yes, sir.

11 Q Okay. Again, did you observe that personally?

12 A No, I did not.

13 Q You're relying on this written report of Mr. Manchester?

14 A Yes.

15 Q Any other reports you're relying on besides Manchester?

16 A For this?

17 Q For this "physically blocked," the actions of Kokesh?

18 A Derrick Pensinul (phonetic).

19 Q I'm sorry, I didn't hear you.

20 A First name is Derrick, last name is Pensinul.

21 THE COURT: He's a ranger, I assume?

22 THE WITNESS: Yes, sir.

23 BY MR. McHUGH:

24 Q And so is Manchester, can we agree, is he a ranger also?

25 A Yes.

1 Q Okay. So they both gave you written reports about the  
2 physical blocking?

3 A Yes.

4 Q Okay. Did any of those reports indicate any type of  
5 punching or kicking or any type of threatening actions by  
6 Kokesh?

7 A Threatening actions?

8 Q Well, this says physically blocked, on that issue. I'm  
9 going to go through some of these words with you, but any  
10 kicking on that?

11 A Kicking? No.

12 Q Any punching by Kokesh?

13 A No.

14 Q Did they give you any other description besides  
15 physically blocked?

16 MS. NATALE: Objection, Your Honor. Again, he  
17 doesn't have the reports in front of him. We'll provide it  
18 all in discovery.

19 THE COURT: This goes to the heart of the matter, so  
20 overrule the objection. You may proceed.

21 BY MR. McHUGH:

22 Q Did they give you any other description besides the words  
23 physically blocked?

24 A Physically blocked and/or obstructed the ranger.

25 Q Well, we'll use that phrase then. Did they -- first of

1 all, when we get to the obstructed, my same question,  
2 obstructed, they didn't tell you that he kicked or punched or  
3 anything like that, did they?

4 A He was obstructing by -- while the rangers were trying to  
5 make a contact with the person who they originally were going  
6 to contact.

7 Q Is that the Donald fellow?

8 A Yes.

9 Q Okay. When you say make a contact?

10 A The rangers advised that they saw somebody that they  
11 thought was in possession of marijuana.

12 Q Okay.

13 A And through that, basically walked towards them to  
14 address the issue.

15 Q Okay.

16 A And as they approached and got closer, one of the rangers  
17 was -- the ranger was obstructed from doing the job because of  
18 the fact that the ranger pushed -- or the ranger was pushed  
19 and was grabbed by the arm, and was actively interfering with  
20 us trying to deal with that individual, which then we had to  
21 divert our attention to take care of Mr. Kokesh with his  
22 physically blocking and grabbing at his hands and arm.

23 Q Let me just ask you a question. You said that the ranger  
24 was pushed. Where is that in your affidavit?

25 A It's not in the affidavit.

1 Q Okay. Is it in the reports of Manchester?

2 A I'm not sure.

3 Q You're not sure. Is it in the reports of Derrick  
4 Pensinul?

5 A Pensinul?

6 MS. NATALE: Objection, Your Honor. The affidavit  
7 says, "as the ranger pushed forward."

8 MR. McHUGH: Exactly.

9 MS. NATALE: I believe the --

10 MR. McHUGH: As the ranger pushed forward, not as  
11 the ranger was pushed.

12 BY MR. McHUGH:

13 Q Your affidavit, the only word about pushing is attributed  
14 to a ranger, is that right?

15 A No.

16 Q Where else is there pushing of somebody besides a ranger?

17 A There was -- the pushing basically came from the ranger  
18 trying to break the hold of the tight grip that was being  
19 held, that was being held on by.

20 Q Sir, I'm not following you. Let's go back. "Physically  
21 blocked and obstructed." Can we agree nothing you -- you  
22 didn't see any of this, is that right? We're going off of the  
23 reports of Manchester and Pensinul, is that right?

24 A Well, what I saw was when Kokesch was brought back to --  
25 or was in custody and was brought back to the area where I



1 was.

2 Q Okay. So your answer to my question, you didn't see any  
3 of this, is yes, I did not see any of this?

4 THE COURT: You personally, you didn't see this?

5 THE WITNESS: No, sir.

6 THE COURT: You relied on the reports.

7 THE WITNESS: Right.

8 MR. McHUGH: Okay.

9 BY MR. McHUGH:

10 Q And nothing in the reports that you received from  
11 Manchester or Pensinul indicates that there was kicking or  
12 punching of that nature when they reference the term  
13 physically blocked or obstructed, right? I think we've  
14 already --

15 A There was resistance.

16 Q I said punching or kicking. Right? There's none of that  
17 as far as Kokesh in the reports?

18 A No.

19 Q Okay. Now we're going to get to -- I asked you, did they  
20 describe in any other way besides the term physically blocked,  
21 what Kokesh's actions were. Do you recall if they did in the  
22 report?

23 A Yes. That he grabbed them by the arm --

24 Q We're going to get to that, but that's in the next  
25 sentence. Do you see that? That's after the ranger pushes

1 Kokesh though, right? I'm reading your affidavit.

2 A Correct.

3 Q All right, let's move on to the next sentence. "As the  
4 ranger pushed forward," do you see that?

5 A Yes, sir.

6 Q So the ranger is pushing, is that right?

7 A I --

8 Q That's confusing to you, "as the ranger pushed forward?"

9 A For the reasons, I'm not sure why he pushed forward. He  
10 might have pushed forward --

11 Q Don't speculate, sir.

12 A Okay.

13 Q We're going off of your sworn affidavit --

14 A Right.

15 Q -- that contains all the material facts.

16 A Okay.

17 Q Okay. The ranger pushed forward, is that right?

18 A I'm not sure.

19 Q It's in your affidavit, "as the ranger pushed forward."

20 A Right.

21 Q You're now saying you're not sure if the ranger did that?

22 A No, sir. As stated.

23 Q As stated what?

24 A The push forward.

25 Q As stated, the push forward what? Are you denying that

1 the ranger pushed forward? Are you saying that this affidavit  
2 is incorrect on that fact?

3 A No, sir, I'm not.

4 Q Okay. So that is a correct fact, is that right?

5 A Yes, sir.

6 Q And then the next sentence says -- and by the way, when  
7 he pushed forward, do these two gentlemen that give you these  
8 reports indicate who he pushed?

9 A Who Kokesh pushed? Yes.

10 Q Okay. We just talked about the ranger pushing forward.

11 A Right.

12 Q Does the affidavit --

13 MS. NATALE: Objection, Your Honor. I think he's  
14 confusing the witness. Nowhere in this affidavit does it say  
15 the ranger pushed another person. It just says he pushed  
16 forward.

17 MR. McHUGH: That's what I just asked, did he push  
18 Kokesh.

19 THE COURT: I'll overrule the objection. You may  
20 proceed.

21 BY MR. McHUGH:

22 Q As the ranger pushed forward, did he push Kokesh?

23 A I did not see him push forward or push Kokesh.

24 Q I know.

25 A I did not see him push forward or push Kokesh.

1 Q I know.

2 A I did not.

3 Q But you put in your affidavit that you're relying on  
4 reports of others, is that right? We've already established  
5 you were back when he got arrested.

6 A A limited amount. And once again, just for the  
7 determination of probable cause.

8 Q Well, this is a real hearing, isn't it? Aren't we in  
9 Federal Court? This is for it, isn't it? Twenty-three years  
10 of law enforcement, right?

11 MS. NATALE: Objection.

12 THE COURT: That's argumentative. I'll sustain the  
13 objection. Don't argue with the witness.

14 MR. McHUGH: I'm sorry.

15 BY MR. McHUGH:

16 Q You put in your affidavit the ranger pushed forward. Are  
17 you telling us now you're not sure about that?

18 A I wasn't there to see that.

19 Q But you put it in your affidavit.

20 A That's -- I have things that I haven't seen also in the  
21 affidavit.

22 Q Okay. So, but you don't make them up, do you?

23 A No, sir.

24 Q Okay. So where did you get the fact that the ranger  
25 pushed forward? You didn't make it up, and you didn't see it.

1 So where did you get it?

2 A From the ranger that was pushed.

3 Q And who is that? Was pushed?

4 A That was Keith Manchester.

5 Q When you say -- where does it say that a ranger was  
6 pushed?

7 A A ranger pushed forward.

8 Q Are you saying that your language "as the ranger pushed  
9 forward" is intending to -- what you meant by that was Kokesh  
10 pushed the ranger?

11 A I'm saying that I think that this is -- the ranger pushed  
12 forward.

13 Q Who did he push, do you know?

14 A I don't know that he pushed anybody. He just pushed  
15 forward.

16 Q Okay. And then after the pushing forward in your  
17 affidavit, is that right, comes the line that "Kokesh grabbed  
18 the ranger by the arm to hold him back," is that right?

19 A Yes.

20 Q Okay. So, by the way, did you see that, or are you  
21 relying on the reports?

22 A Relying on the reports.

23 MS. NATALE: He already testified that he didn't see  
24 that.

25 MR. McHUGH: Okay.

1 BY MR. McHUGH:

2 Q "Kokesh was then taken into custody," do you see that?

3 A Yes.

4 Q Next line, okay. At any time when he's taken into  
5 custody, was there any kicking, punching, things of that  
6 nature? By Kokesh.

7 A No.

8 Q Where you put in there, the affidavit, "Kokesh grabbed  
9 the ranger," do you see that?

10 A Yes.

11 Q Do you know what he used to grab the ranger with?

12 A Where it says Kokesh grabbed the ranger --

13 Q Yes.

14 A -- by the arm?

15 Q Yes.

16 A With his hand.

17 Q You didn't see that, right?

18 A No.

19 Q And that will be in the report of Manchester or Pensinul?

20 A Yes.

21 Q Okay. Do you know what arm he grabbed him with?

22 A Right arm.

23 Q Okay. And that's in the report also, is that right?

24 A Yes, sir.

25 Q Okay. And then "Kokesh was taken into custody." Who

1 took him into custody?

2 A Ranger Manchester.

3 Q Okay. If I could just clarify, when you said the right  
4 arm, you meant Kokesh used his right arm?

5 A No, he grabbed the ranger's right arm.

6 Q Oh, okay, I'm glad I asked that again. What hand -- I  
7 was asking about Kokesh. What hand did Kokesh use?

8 A I don't know which hand he used.

9 Q But is it your understanding from these reports that it  
10 was a hand that he used to grab him?

11 A Yes.

12 Q Okay. And you don't know which one?

13 A No.

14 Q Okay. Did this -- so the officer in question in this  
15 case then was Officer Manchester, is that right?

16 A Yes.

17 Q Was he injured in any way?

18 A No.

19 Q Did he miss any work as a result of anything?

20 A No.

21 Q No need for hospitalization then obviously?

22 A No.

23 Q In paragraph 7, "the cigarette that the ranger was  
24 attempting to recover." Is that again the ranger being  
25 Manchester?

1 A I'm sorry, can you repeat that?

2 Q Paragraph 7.

3 A Right.

4 Q We've only got one more paragraph, 7 and 8 and then we're  
5 done.

6 A Got you.

7 Q The cigarette that the ranger was attempting to recover,  
8 is that ranger also Manchester?

9 A Yes.

10 Q And it was later seized by other rangers, is that right?

11 Do you see that? Do you recall who those other  
12 rangers were that seized this cigarette?

13 A That would be --

14 Q If you don't recall, sir, you don't recall.

15 A I don't recall.

16 Q Okay. Was that the cigarette from Donald, is that who  
17 we're talking about?

18 A Yes, because -- I would say yes.

19 Q Okay. Mr. Kokesh was never seen smoking marijuana that  
20 day, was he?

21 A I didn't see him smoking any --

22 Q You didn't receive any reports verbally or written that  
23 he was smoking marijuana, did you?

24 A No, he was standing next to somebody that was smoking  
25 marijuana.



1 Q Okay, so the answer is no to my question, is that right?

2 A Yes.

3 Q Okay. And you didn't recover -- or the Government did  
4 not recover any marijuana from Mr. Kokesh, did they?

5 A No, sir.

6 Q Okay. Did you have any information about Mr. Kokesh  
7 before this rally?

8 MS. NATALE: Objection, Your Honor, relevance.

9 THE COURT: Sustained.

10 BY MR. McHUGH:

11 Q What other law enforcement agencies were out there  
12 besides, you've mentioned the park rangers, you've mentioned  
13 the Philadelphia police, were there other agencies out there  
14 that day?

15 A Other --

16 MS. NATALE: Objection.

17 THE COURT: Overruled.

18 A There was one U.S. Fish & Wildlife Service ranger from  
19 Tinicum.

20 Q Okay.

21 A I think that was it as far as PPD, ourselves, and the  
22 ranger from Fish & Wildlife Service.

23 Q Okay. And so those were the only agencies involved in  
24 this matter, is that right, at that time?

25 A Yes.

1 Q Okay. I know you couldn't estimate the crowd, but you  
2 indicated that there were at least 86, approximately 86 law  
3 enforcement people out there. Wouldn't it be fair to say  
4 there were more law enforcement out there than people actually  
5 participating in the rally?

6 A I can't make an estimate.

7 (Pause)

8 Q How did the law enforcement know the identity of my  
9 client before he was taken and arrested?

10 MS. NATALE: Objection, Your Honor.

11 THE COURT: I'll overrule the objection.

12 Maybe you should ask --

13 MR. McHUGH: You can answer.

14 THE COURT: Wait. Maybe you should ask the first  
15 question, did they know his identity before.

16 BY MR. McHUGH:

17 Q Did law enforcement know the name of Mr. Kokesch before he  
18 was taken into custody?

19 A Yes.

20 Q And how did they know that?

21 A Through whatever -- I can't say how they know of him.

22 Q I'm sorry?

23 A I couldn't speak to how they know him or how they -- I  
24 mean --

25 THE COURT: It's a vague question. You're talking

1 about law enforcement in general. Maybe you should ask him  
2 did he know him.

3 BY MR. McHUGH:

4 Q Did you know him?

5 A Yes.

6 Q Okay. How did you know him?

7 A Through contacts with other law enforcement agencies.

8 Q Done prior to the rally?

9 A Yes.

10 Q Okay. And who were these law enforcement agencies?

11 A Philadelphia Police Department, their Civil Affairs  
12 Division, those were the two that I could think of for now.

13 Q Any other federal agencies?

14 A The Federal Protective Service, and I'm not sure who  
15 else.

16 Q Could there have been other federal agencies?

17 A Yes.

18 Q Okay. And so prior to this rally, had you sought out  
19 this information or had they relayed it to you?

20 MS. NATALE: Objection, Your Honor.

21 THE COURT: I'll sustain the objection.

22 BY MR. McHUGH:

23 Q How long prior to this day were you in possession of that  
24 information of who Mr. Kokesch was?

25 A I have no idea.

1 Q Did you actually bring a photograph of him to the rally?

2 A No, I did not.

3 Q So you were that familiar with him that you knew him by  
4 face?

5 MS. NATALE: Objection, Your Honor.

6 THE COURT: Overruled.

7 A Yes, from being on stage, past events that we had.

8 Q Okay. So from past events at the park, you knew him from  
9 those?

10 A Yes, sir.

11 Q Was there any discussion about arresting Mr. Kokesh prior  
12 to the start of the rally --

13 A No.

14 Q -- amongst you and other law enforcement?

15 A No.

16 Q No discussion whatsoever?

17 A No.

18 Q Whether it be verbal or through electronic communication?

19 A No.

20 MR. McHUGH: That's all we have, Your Honor.

21 THE COURT: Yes, go ahead.

22 REDIRECT EXAMINATION

23 BY MS. NATALE:

24 Q You testified about a fence, is that correct?

25 A Yes.

1 Q Were there gaps in the fence?

2 A There were large gaps in the fence to where egress was  
3 not an issue at all.

4 Q And just to make clear, your affidavit, that is a summary  
5 and it doesn't include exact quotes from any reports, is that  
6 correct?

7 A That's correct.

8 MS. NATALE: Nothing further, Your Honor.

9 THE COURT: Anything else, Mr. McHugh?

10 MR. McHUGH: No, Your Honor.

11 THE COURT: Okay, I'll hear argument. Do you want  
12 to go first, Mr. McHugh?

13 MR. McHUGH: Sure, Your Honor.

14 THE COURT: You're excused, sir.

15 MR. McHUGH: Your Honor, looking at the statute  
16 Section 111, assaulting, resisting or impeding certain  
17 officers or employees. Now, obviously the complaint that we  
18 have is just vague, it's just general. It just cites to that  
19 Section 111. I don't know why the Government chose to do  
20 that. But I do know from the Government's detention memo that  
21 they aver that it's essentially the second --

22 THE COURT: A(2)?

23 MR. McHUGH: A(2), and then there's two descriptions  
24 of simple assaults described in there. There's one that's  
25 punishable by imprisonment of one year. And then two, where

1 such acts involve physical contact with the victim of that  
2 assault or intent, eight years. Do you see that?

3 THE COURT: Yes.

4 MR. McHUGH: Okay. That's the one that's in the  
5 detention memo so I presume that that's the one that the  
6 Government is arguing, is present here.

7 THE COURT: What do they have to show in your view?

8 MR. McHUGH: I would suggest, Your Honor, under  
9 either, under any interpretation of this statute, the  
10 Government has to show by probable cause that simple assault  
11 has been made out, when I read this statute.

12 So, when you look at --

13 THE COURT: Just point to me the language. I'm  
14 sorry, Mr. McHugh --

15 MR. McHUGH: That's okay.

16 THE COURT: -- just go with me. Where is the  
17 language in 111 that shows that they have to show simple  
18 assault?

19 MR. McHUGH: Well, because there's no other  
20 punishment. It says "shall, where the acts in violation of  
21 this section constitute only simple assault, be fined under  
22 this title or imprisoned not more than one year or both." Do  
23 you see that, sir?

24 THE COURT: Yes, sir.

25 MR. McHUGH: Okay. And then, and "where such acts

1 involve physical contact with the victim of that assault, or  
2 the intent to commit another felony," then we go into the  
3 eight years or both.

4 So both require the finding by the Court by probable  
5 cause of simple assault for this statute to apply.

6 THE COURT: Okay.

7 MR. McHUGH: So, then you think to yourself well,  
8 what is simple assault. Well, if you look in the Third  
9 Circuit has looked at simple assault under this section, it's  
10 not defined. So they say, the Third Circuit, in the decision  
11 I found, United States vs. McCulligan which is 256 F.3d 97,  
12 that you go to the common law definition.

13 Now, in that case, the Government argued that it was  
14 the Model Penal Code that applied. But the Third Circuit  
15 rejected the Government's argument as far as the Model Penal  
16 Code and it said that you go back to the common law. And what  
17 they cited there, the case that, this 2001 case, is that they  
18 found that simple assault is a crime committed by either a  
19 willful attempt to inflict injury upon the person of another,  
20 or by a threat to inflict injury upon the person of another.

21 You don't have that. Take as true this affidavit of  
22 probable cause. You have the park ranger pushing through, and  
23 Mr. Kokesch grabbing his arm. And I think the language is "to  
24 hold him back." Grabs his arm to hold him back. That's what  
25 you have in this case.

1           Taken as true, the Government's evidence does not  
2           make out simple assault. And under the statute that they have  
3           charged, there's nothing less, there's nothing less than  
4           simple assault.

5           So I suggest to the Court when you consider the  
6           language of the Third Circuit which is you go to the common  
7           law definition of simple assault, which is a willful attempt  
8           to inflict injury, there is nothing in this affidavit or the  
9           testimony you heard today that Mr. Kokesch was attempting to  
10          inflict injury upon anybody.

11          The only evidence we have of a aggressive action is  
12          the park ranger pushing, which took us about 20 minutes to get  
13          through that.

14          So I think if you look carefully at the definition  
15          of simple assault, it doesn't apply here.

16          THE COURT: Do you have a copy of that decision?

17          MR. McHUGH: I can hand up the copy I have, Your  
18          Honor.

19          THE COURT: Okay. And where in the detention motion  
20          do you read that the Government's proceeding under the, the  
21          last section --

22          MR. McHUGH: Well, when they talk about penalty, in  
23          the section where they talked about penalty, when they talk  
24          about eight years --

25          THE COURT: Right.



1 MR. McHUGH: -- that's where I said okay, that's  
2 what they must be, since their complaint doesn't specify, I'm  
3 reading between the lines here --

4 THE COURT: Right.

5 MR. McHUGH: -- in their detention memo that they  
6 must be going for the eight-year one.

7 THE COURT: Where it has to involve physical contact  
8 with the victim?

9 MR. McHUGH: Right. And an assault. And the  
10 assault under the common law requires intent to injure. You  
11 don't have that. Not any contact can be a crime, obviously,  
12 and certainly Congress didn't intend that with the passing of  
13 Section 111.

14 THE COURT: Right, so it's like -- the first part  
15 talks about an assault and the second part talks about a  
16 battery.

17 MR. McHUGH: Right. And that the common law, a  
18 simple assault was an attempted battery.

19 THE COURT: Right.

20 MR. McHUGH: And that's discussed in that case.

21 THE COURT: Right. Well, they are alleging physical  
22 contact.

23 MR. McHUGH: But it still requires an assault. And  
24 certainly --

25 THE COURT: Right. Which you're saying is an intent

1 to inflict injury.

2 MR. McHUGH: Inflict injury.

3 THE COURT: Right. Okay. Anything else, Mr.  
4 McHugh?

5 MR. McHUGH: I think my argument is that, Your  
6 Honor.

7 THE COURT: Counsel.

8 MS. NATALE: Certainly, Your Honor.

9 Well, we're not proceeding under Section A(2). A(2)  
10 says "forcibly assaults or intimidates any person who formerly  
11 served as a person designated in Section 114."

12 So we're not proceeding under Section A(2). We're  
13 not talking about someone who formerly served. We're  
14 proceeding under Section A(1) that reads "forcibly assaults,  
15 resists, opposes, impedes, intimidates or interferes with any  
16 person designated in Section 114 of this Title."

17 And I would disagree with counsel's -- I'm sorry?

18 MR. McHUGH: I'm sorry.

19 MS. NATALE: I would disagree with counsel's  
20 interpretation of the law. I don't have that case that he  
21 handed up to Your Honor. But I think the statute is very  
22 clear, and I know that there is Third Circuit case law that  
23 defines what the elements are of the statute. It does not  
24 require physical contact. There's a Third Circuit case,  
25 United States vs. Goodwin, a defendant is guilty of forcible

1 assault and resistance for simply pushing a federal agent.

2 In fact, there's a First Circuit case where just  
3 spitting on a postal carrier falls within the description of  
4 forcibly assaults, resists, impedes, interferes.

5 In fact, you don't need physical contact. Even the  
6 threat to inflict physical injury can be enough. And while  
7 not an expert on simple assault or what the common law is,  
8 Your Honor, I know that simple assault can be just a threat.

9 So, physical contact is not necessary to satisfy the  
10 section --

11 THE COURT: You're not alleging a threat in the  
12 affidavit.

13 MS. NATALE: No.

14 THE COURT: You're alleging minimal contact at the  
15 minimum, the least.

16 MS. NATALE: Yes. No, I was just responding to --

17 THE COURT: Right.

18 MS. NATALE: -- counsel's representation to the  
19 Court that the statute requires physical contact. And the  
20 statute does not require physical contact.

21 But in this case, the affidavit establishes probable  
22 cause that the defendant forcibly impeded and interfered with  
23 the rangers. And it also establishes that the defendant  
24 forcibly assaulted the officers.

25 What happened here was that the defendant, along

1 with Richard Tamaccio, was seen and heard over a loudspeaker  
2 encouraging the crowd to smoke marijuana, and form a tight  
3 circle and lock arms in order, and for the purpose of  
4 physically impeding and interfering with law enforcement.

5 And as the ranger was approaching someone next to  
6 the defendant who was smoking marijuana, the defendant  
7 physically and obstructed him, and he grabbed the ranger by  
8 the arm.

9 THE COURT: But I'm not sure the evidence that was  
10 presented to me just a moment ago showed that he went on the  
11 loudspeaker and urged everyone to block the officers. I'm not  
12 saying you're not right, but I'm not sure in the record that's  
13 presented that that's been presented.

14 Has it, Mr. McHugh?

15 MR. McHUGH: No. In fact --

16 THE COURT: I don't remember that being brought out  
17 that -- you can reopen the record if you want, but I don't  
18 remember the ranger saying that Mr. Kokesh was actually  
19 verbally urging everybody to block the officers.

20 MS. NATALE: You're correct, Your Honor. And the  
21 affidavit is what I'm referring to.

22 THE COURT: Is that in the affidavit?

23 MS. NATALE: Yes. During the event, Mr. Kokesh was  
24 addressing the group over the loudspeaker system. Mr.  
25 Tamaccio urged over the loudspeaker that those present should

1 smoke marijuana and announce a countdown, and the crowd was  
2 also urged over the loudspeaker to form a tight circle and  
3 make it difficult for law enforcement.

4 THE COURT: But the ranger just spoke a moment ago  
5 and he said it was Mr. Tamaccio who was doing it.

6 MS. NATALE: Yes, who was making that statement.

7 THE COURT: He didn't say Mr. Kokesh was the one.

8 MS. NATALE: They were both addressing the crowd,  
9 Your Honor, and that's --

10 THE COURT: But there's nothing in the record that  
11 says it. I'm not doubting you, but tell me, I don't believe  
12 the officer said that a moment ago. And it's not in the  
13 affidavit, that he was the one.

14 MS. NATALE: That he was the one that actually said  
15 that? That may not be in the record, Your Honor.

16 THE COURT: Right.

17 MS. NATALE: But what I'm saying is that that's what  
18 the crowd was directed to do.

19 THE COURT: Okay.

20 MS. NATALE: To hinder law enforcement.

21 THE COURT: Okay.

22 MS. NATALE: And he was over the loudspeaker as  
23 well, directing the crowd to do things. The crowd --

24 THE COURT: But there's nothing in the record that  
25 said that he was the one.

1 MS. NATALE: Okay.

2 THE COURT: Was there? I mean tell me if there was.  
3 I'm not --

4 MS. NATALE: Well, that Mr. Tamaccio was addressing  
5 the crowd --

6 THE COURT: Right. And you're saying Mr. Kokesh,  
7 but I don't see anything in the record where he actually was  
8 on the bullhorn telling everybody to --

9 MS. NATALE: Okay.

10 THE COURT: -- obstruct the arrest.

11 MS. NATALE: You're correct, Your Honor.

12 THE COURT: Right.

13 MS. NATALE: I'm saying the crowd was told that.

14 THE COURT: Okay.

15 MS. NATALE: Not by him, but the crowd was told  
16 that.

17 THE COURT: Right. Okay.

18 MS. NATALE: To hinder law enforcement. And then  
19 just after the crowd was told that, this defendant did just  
20 that. When the ranger was trying to approach an individual  
21 who was smoking marijuana, he physically obstructed and  
22 impeded and got in front of the ranger, preventing him to  
23 approach the person with the marijuana. And then he grabbed  
24 his arm.

25 Here, Your Honor, we've established more than enough

1 to show probable cause that the defendant forcibly impeded and  
2 interfered with the rangers. And also that he forcibly  
3 assaulted them by grabbing the ranger's arm.

4 And with that, the Government arrests.

5 THE COURT: Mr. McHugh?

6 MR. McHUGH: If I may, Your Honor.

7 THE COURT: Sure.

8 MR. McHUGH: As to paragraph 5, the evidence is in  
9 the record. I specifically asked him each line as to who was  
10 saying what. And each and every time he mentioned Tamaccio is  
11 the one. Tamaccio is the one who urged over the loudspeaker,  
12 tight circle, hinder law enforcement. He said that  
13 affirmatively, even though it's not in his affidavit.

14 Furthermore, there's no charge of conspiracy here.  
15 There's no charge of conspiracy in this affidavit or this  
16 complaint.

17 Then, when you get to counsel's argument about the  
18 simple assault, look at the statute. I'm not talking about  
19 A(1)(2), a former officer of the Federal Government. I'm  
20 talking A(1). But A(1) then goes into the next paragraph  
21 after A(1)(2), which is "shall, where the acts in violation of  
22 this section constitute only simple assault."

23 So there has to be a finding that they constitute  
24 simple assault to be even punished by one year in jail. And  
25 what I'm saying is the Third Circuit says go to the common law

1 and look at what simple assault says.

2 And I agree with the Government, that simple assault  
3 can mean not touching, because it's an attempted battery under  
4 the common law. But the attempt has to be with the intent to  
5 inflict injury. And that is where this affidavit is  
6 deficient. Because there is nothing in here that you can even  
7 infer that Mr. Kokesh was doing anything to inflict injury.  
8 He was pushed, he grabbed an officer's arm, or the ranger's  
9 arm, to hold him back. That's what the affidavit says, to  
10 hold him back.

11 As far as the physically blocked and obstructed,  
12 it's -- you still need the simple assault. You need the  
13 intent to injure, under this statute.

14 And so, given counsel's argument, I suggest a  
15 careful reading of this statute, applying the common law, the  
16 charge, even the one-year charge has not been made out.

17 THE COURT: Let me ask the Assistant U.S. Attorney.  
18 If you read A(1), okay, doesn't A(1) then flow into, or y have  
19 to read the last paragraph of 111 which says that where the  
20 acts in violation of this section constitute a simple assault,  
21 or where such acts involve physical contact, isn't in fact Mr.  
22 McHugh correct, that you have to show a simple assault?

23 MS. NATALE: Your Honor, no, the Government  
24 disagrees with --

25 THE COURT: With his reading of 111?



1 MS. NATALE: Yes.

2 THE COURT: So the last paragraph of 111, I just  
3 read A(1), and after the semi-colon duties, I ignore the rest  
4 of it, and that only modifies A(2), is that what you're  
5 saying?

6 MS. NATALE: Your Honor, that's a grading section.  
7 The Government's position is that if you read the first  
8 sentence A(1), "forcibly assaults, resists, opposes, impedes,  
9 intimidates or interferes," that that does not require an  
10 assault. That's why there's all the other words after the  
11 word assault.

12 Forcibly, and the case law says this, forcibly does  
13 apply to each and every word; forcibly assaults, forcibly  
14 resists, forcibly opposes, forcibly impedes, and forcibly  
15 intimidates or forcibly interferes.

16 But the statute does not require an assault.

17 THE COURT: That only goes to the penalty portion of  
18 the --

19 MS. NATALE: Yes, the second part is a grading  
20 section, Your Honor.

21 THE COURT: All right.

22 MS. NATALE: And the case law shows that. And I can  
23 provide that to you after the hearing, if you wish.

24 THE COURT: All right. Mr. McHugh, Your Honor.

25 MR. MCHUGH: But the statute does more than talk

1 about grading, because it goes into, and it talks about the  
2 use of simple assault.

3 Counsel cannot deny that for it to be a one-year  
4 penalty, maximum penalty of one year, there is no lesser  
5 penalty in this statute, so for this statute to apply, that  
6 they charged, that they charged, 111, the minimum, the most  
7 least severe punishment of one year requires a simple assault.  
8 And they haven't proven that.

9 THE COURT: Okay. Look, I'm going to take this  
10 under advisement. I'm going to look at this case. I believe  
11 Mr. McHugh raises some issues that really require me to look  
12 at it.

13 But let's go to the issue of -- and I'll have a  
14 decision out today -- let's go to the issue of detention or  
15 release. Have you been able to talk among yourselves as to  
16 trying to work out some conditions of release?

17 MR. MCHUGH: I did briefly. I got the Government's  
18 detention memorandum. I saw in there that they indicated that  
19 they would be amenable to some conditions, and then I talked  
20 further with counsel for the Government. I said what  
21 conditions are you talking about. They said basically the  
22 standard conditions.

23 THE COURT: Right.

24 MR. MCHUGH: And so, I have talked to my client, and  
25 I don't think we're probably going to be able to agree to the

1 standard conditions that the Government is referring to.

2 THE COURT: All right, just a moment.

3 MR. McHUGH: So at this time, I don't think -- at  
4 this time, I know there's not an agreement as to that.

5 THE COURT: All right, Mr. Goldberg.

6 MR. GOLDBERG: Your Honor, the Government has always  
7 been willing to entertain the standard conditions that every  
8 defendant in this country is asked to provide when they're  
9 released after being charged.

10 The defendant has refused to provide any information  
11 whatsoever. This is not --

12 THE COURT: What information hasn't he provided?

13 MR. GOLDBERG: My understanding, Your Honor, is that  
14 other than his name and that he is from San Francisco, that's  
15 about it. So that we don't have location, former addresses,  
16 employment, family ties, whether he's any kind of danger to  
17 the community because of firearms. He has done nothing to  
18 indicate that he intends to appear in Court, that he is  
19 locatable, that he has a stake in appearing in Court, that  
20 he's willing to post anything, that he has any regard frankly  
21 for the authority of this Court.

22 And to be crystal clear about it, Your Honor, this  
23 is the defendant's choice. The Government, just as with Mr.  
24 Tamaccio, will be happy to consult with counsel and to come to  
25 an agreement as to Mr. Kokesch's release. Mr. Kokesch is his

1 own jailer. When he wants to be freed, he can participate in  
2 the Court process, and I'm sure that the Government will be  
3 able to come to some terms.

4 I can't speculate as to the reason that he wants to  
5 stay in custody, but it is his decision alone. And given the  
6 fact that we have absolutely no assurances, the Government  
7 asks that he remain in custody.

8 THE COURT: Go ahead, Mr. McHugh.

9 MR. McHUGH: Your Honor, just briefly. As to the  
10 comments by the Government both before Your Honor and in this  
11 memorandum.

12 I spoke personally with Mr. Harris, the Pretrial  
13 Services officer. He told me, contrary to the allegations of  
14 the Government, that Mr. Kokesch did --

15 THE COURT: How do you pronounce your name? Is it  
16 Kokesch or --

17 MR. McHUGH: Kokesch.

18 THE COURT: Okay.

19 MR. McHUGH: He did provide his name, he did provide  
20 his date of birth, he did provide his Social Security number.  
21 He provided his father's name. He provided his father's phone  
22 number.

23 THE COURT: How about an address?

24 MR. McHUGH: He did not provide that.

25 THE COURT: Mr. Kokesch, if you'd just give us your

1 address and a phone number. And why do we need it? Any  
2 defendant that's arrested, we need to locate them, we need to  
3 send them Court notices so they can appear and they can fight  
4 these charges. We also just need to keep track of where  
5 you're going to be if we need to find you.

6 That's all we're asking for. I'll release you  
7 today. Just give me an address and a phone number that could  
8 be verified, that we could just check it out and in fact it's  
9 true. That's all I'm asking you, and I'll release you today  
10 on standard conditions. And this will all be over with.

11 So talk to Mr. McHugh. Just address, phone number,  
12 where we can find you, so you can report to Pretrial Services  
13 until this matter is resolved. It's in your interest, because  
14 obviously you believe you're innocent of these charges. You  
15 want to get out of jail so you can consult with Mr. McHugh and  
16 fight these charges.

17 So talk to him for a minute. Give us the address,  
18 give us the phone number. Pretrial Services is here, and  
19 we'll see if we can work this out.

20 Yes, sir?

21 PRETRIAL SERVICES OFFICER: Can we go to sidebar,  
22 Your Honor? Pretrial. I can let you know what the issue is.

23 THE COURT: Go ahead.

24 PRETRIAL SERVICES OFFICER: The issue is, first,  
25 Your Honor, there are standard conditions of bail, as you're

1 aware. And if Mr. Kokesch is going to say to counsel that I'm  
2 not going to abide with even the standard conditions of bail,  
3 this is going to be around and around and around, coming back  
4 to Your Honor to say he's not complying.

5 THE COURT: Well, we haven't gotten to that.

6 PRETRIAL SERVICES OFFICER: Okay.

7 THE COURT: I haven't imposed conditions, and I've  
8 got to get to first base first, which is getting us an  
9 address, give us a phone number, and then we'll discuss  
10 conditions. And when I impose conditions, you're going to  
11 have to comply with them to be released.

12 PRETRIAL SERVICES OFFICER: Thank you, Your Honor.

13 THE COURT: And if you don't comply with them, then  
14 obviously I can't release you. So we'll just talk about the  
15 conditions. This is nothing unusual. This is done every day,  
16 hundreds of times, Mr. McHugh can tell you. You've got to  
17 give us an address and a phone number so we can contact you.

18 Because depending what I do, you know, I don't know  
19 what I'm going to do with this case, but if it goes forward,  
20 we need to contact you. That's as simple as it can be.

21 Go ahead, Mr. McHugh, why don't you talk to your  
22 client.

23 MR. McHUGH: Sure. Thank you, Your Honor.

24 (Pause)

25 MR. McHUGH: Your Honor, Mr. Kokesch would not be

1 willing at this time to -- he considers it a violation of  
2 privacy to give his address without knowing what the  
3 conditions would be.

4 As described to him, probably some of the conditions  
5 that the Government, I described as standard, will probably be  
6 unacceptable. But obviously I know that that's the second  
7 stage, and obviously we can argue that out with the Court.  
8 But as far as getting the address, he's not willing to go  
9 forward giving the address without knowing what these  
10 conditions would be, because essentially he'd be giving up  
11 some privacy interests and potentially not accepting the  
12 conditions anyway.

13 Does that make sense to the Court?

14 THE COURT: No, it doesn't.

15 MR. McHUGH: I mean, not make sense, but what --

16 THE COURT: If you look at Title 18 Section 3153,  
17 all the information you provide to Pretrial Services cannot be  
18 used against you in any way in any criminal proceeding. You  
19 can look at that. It's 3153, Title 18. This is basic  
20 information that can't be used against you.

21 And I'm telling you that, and Mr. McHugh will  
22 confirm that. So, you don't bargain with the Court over the  
23 conditions. You don't say "you tell me what the conditions  
24 are and then I'll give you the information." That's not the  
25 way it works. We just need basic information. I want to

1 release you today. I want to get this thing over with. But I  
2 need to know where you're going to be.

3 Because if I want to send a notice or the clerk of  
4 the Court as to you have to appear next week, where do we send  
5 it to? It's basic. You're a smart guy, you're a rational  
6 guy, so just work with us. We can discuss the conditions.  
7 Mr. Goldberg will say I want XYZ conditions. Mr. McHugh will  
8 say they're not acceptable. I'll hear it and I'll work it  
9 out.

10 But the bottom line is once I say these are the  
11 conditions, you have to comply. So, Mr. McHugh, talk to him  
12 again.

13 (Pause)

14 MR. McHUGH: Your Honor, again, a little bit of the  
15 cart before the horse. There's a single condition at this  
16 time that Mr. Kokesch is objecting to, and that's the  
17 possession of firearms.

18 And so, he will provide an address to the Court if  
19 that is now going to be a condition of his release. And I  
20 know from looking into this under the Bail Reform Act, that  
21 that is not a required condition. It is a condition that the  
22 Court can consider, and I know I don't want to get into  
23 argument about this yet --

24 THE COURT: Right.

25 MR. McHUGH: -- but it is not by any means a



1 mandatory condition.

2 THE COURT: You're negotiating, and you can't do  
3 that. You know, that's a good argument, as to whether -- I  
4 don't know what I'll do as to whether I'll impose a condition  
5 on firearm. There's a good argument why that's not necessary  
6 in this case. I don't know yet.

7 You can't say to me "I'm not gonna give you my  
8 address unless you agree to this." It just doesn't work that  
9 way. If you won't agree to your address, if you won't provide  
10 and cooperate with Pretrial Services, I have no alternative.  
11 I have to detain you, and you're going to stay in there until  
12 you give us the information.

13 I don't want to do that. You're making that  
14 decision. You have the keys to your freedom right now. Just  
15 give us the basic information. You're asking us to treat you  
16 differently than the thousands of people that are arrested.  
17 We're not going to do that.

18 If you provide your information, we'll have an  
19 argument. And perhaps a firearm condition is not appropriate  
20 in this case. I don't know, I haven't heard from Mr. McHugh,  
21 I haven't heard from Mr. Goldberg.

22 I'll give you one last chance. If you provide the  
23 information, if you don't, you're going to be detained. I  
24 don't want to do that but you're giving me no other choice,  
25 and we'll have a hearing next week to determine the status of

1 your bail.

2 And in the meantime I'll decide these issues of the,  
3 you know, the probable cause issues which are substantial, and  
4 I'll look at them.

5 Mr. McHugh, go ahead.

6 (Pause)

7 MR. McHUGH: Mr. Kokesh will be agreeable to release  
8 his address if it's possible to be kept under seal. Obviously  
9 Pretrial would know it, the Government would know it, and the  
10 Court would know it.

11 THE COURT: Mr. Goldberg?

12 MR. GOLDBERG: Your Honor --

13 THE COURT: It won't be under seal because it will  
14 be in the Court records. You know, there will be a Court --  
15 there's a docket. In other words, each case, the clerks  
16 generate what's called a docket. And on the docket it would  
17 have your address on it, because the clerk, who's somebody  
18 down in the Clerk's Office, would have to know to whom to send  
19 notices, and they'll have to look at your address. We just  
20 don't do that.

21 And Mr. McHugh knows that too.

22 MR. McHUGH: I understand. But I do think that if  
23 it was kept under seal -- you're saying that it would have to  
24 appear as part of the docket?

25 THE COURT: Yes.

1 MR. McHUGH: There is an argument in this. He's  
2 given the condition that is at issue and the address. He has  
3 a concern of his own personal safety. If somehow that address  
4 were released to the public and then that condition was  
5 applied to him, then he's concerned for his own personal  
6 safety.

7 THE COURT: Oh, you mean the condition of the  
8 firearm?

9 MR. McHUGH: Yes. So there's a bit of a link of the  
10 two issues. But he is willing to give his address, obviously  
11 to the parties that need the address for Court notices, but he  
12 just does not want that released to the public.

13 THE COURT: Well, he's got -- now he's negotiating.  
14 He's got to talk to Pretrial Services. I have to rule on  
15 this.

16 MR. McHUGH: Okay.

17 THE COURT: Mr. Kokesh, you've got to follow the  
18 rules. And the rules are you need to interview with Pretrial  
19 Services, you need to provide that information. I told you  
20 that this information is confidential. It's not disclosed,  
21 only to me, to the U.S. Attorney and also to your defense  
22 lawyer.

23 I haven't made any decisions as to what conditions  
24 are -- that I would impose on you in this case. But until you  
25 provide us the basic information, unfortunately I have to

1 order your detention.

2 I want you to think about this. I'll schedule --  
3 I'm going to enter an order of detention, ordering you  
4 detained until you give me this information. We'll have a  
5 hearing on Tuesday before Judge Carol Wells, different judge,  
6 to see how you want to proceed with this. But I'm prepared to  
7 release you today as long as you do what every other defendant  
8 does in this courthouse, is to provide the basic information.

9 I am not prejudging, I have no idea what the proper  
10 conditions are. I know you're a veteran. I don't think  
11 you're a risk of flight. I don't think this is an unusual  
12 case so I don't see any special circumstances of, you know,  
13 that this is any special case, anything different than  
14 anything else.

15 So I'm prepared to release you but you've got to  
16 comply. And if you don't comply, you're making a decision  
17 that you want to stay in jail. So I'm going to order you  
18 detained. That's it. Okay?

19 And in the meantime, I'll look at your argument very  
20 carefully, Mr. McHugh, on the probable cause. All right,  
21 Court's adjourned on this case.

22 MR. McHUGH: Thank you, Your Honor.

23 (Proceeding concluded at 2:46 p.m.)

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C E R T I F I C A T I O N

I, Sandra Carbonaro, court approved transcriber,  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in the  
above-entitled matter.

\_\_\_\_\_  
SANDRA CARBONARO

Diana Doman Transcribing \_\_\_\_\_  
AGENCY DATE